

U.S. Department of Labor

Office of Administrative Law Judges
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CASE NO.: 2000-LHC-978

OWCP No.: 07-141654

IN THE MATTER OF:

SYLVESTER WILLIS

Claimant

v.

AIR MED SERVICES, INC.

Employer

and

LOUISIANA WORKERS' COMPENSATION
CORPORATION,

Carrier

APPEARANCES:

Sylvester Willis, Pro Se

Ted Williams, ESQ.

For the Employer/Carrier

Before: LEE J. ROMERO, JR.
Administrative Law Judge

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (herein the Act), 33 U.S.C. § 901, et seq., brought by Sylvester Willis (Claimant) against Air Med

Services, Inc. (Employer) and Louisiana Workers' Compensation Corporation (Carrier).

The issues raised by the parties could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for hearing. Pursuant thereto, Notice of Hearing issued scheduling a formal hearing on February 16, 2001, in Lafayette, Louisiana. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs. Claimant offered three exhibits while Employer/Carrier proffered five exhibits which were admitted into evidence along with one Joint Exhibit. This decision is based upon a full consideration of the entire record.¹

Post-hearing briefs were received from the Claimant and Employer/Carrier on April 2, 2001 and March 29, 2001, respectively. Based upon the stipulations of the parties, the evidence introduced, my observations of the demeanor of the witnesses, and having considered the arguments presented, I make the following Findings of Fact, Conclusions of Law and Order.

I. STIPULATIONS

At the commencement of the hearing, the parties stipulated (JX-1), and I find:

1. That Claimant was injured on September 21, 1996.
2. That Claimant's injury occurred during the course and scope of his employment with Employer.
3. That there existed an employee-employer relationship at the time of the accident/injury.
4. That the Employer was notified of the accident/injury on September 26, 1996.
5. That Employer/Carrier filed a Notice of Controversion on October 22, 1998.

¹ References to the transcript and exhibits are as follows: Transcript: Tr.____; Claimant's Exhibits: CX-____; Employer/Carrier Exhibits: EX-____; and Joint Exhibit: JX-____.

6. That an informal conference before the District Director was held on February 24, 1999.

7. That Claimant received temporary total disability benefits from September 26, 1996 through October 20, 1998 at a compensation rate of \$365.34/week.

8. That Claimant's average weekly wage at the time of injury was \$548.00.

9. That \$8,338.16 in medical benefits for Claimant have been paid pursuant to Section 7 of the Act.

II. ISSUES

The unresolved issues presented by the parties are:

1. Whether Claimant has reached maximum medical improvement;
2. If Claimant has reached maximum medical improvement, what is the nature and extent of Claimant's disability, if any;
3. Whether Claimant is entitled to continuing weekly compensation benefits;
4. Whether Claimant is entitled to reimbursement by Employer/Carrier of medical and pharmaceutical bills;
5. Attorney fees due to Attorney Charles Benjamin Landry pursuant to a petition for Intervention.

III. STATEMENT OF THE CASE

THE TESTIMONIAL EVIDENCE

Claimant

Claimant testified that he is 45 years old, has a high school diploma and also attended trade school and college. (Tr. 19, 52). Claimant is married and has three children ranging in age from eleven to twenty-two. (Tr. 20). Claimant has a diploma in fluid power technology, hydraulics and pneumatics from the University of Southern Louisiana (USL) and has received training as an EMT and paramedic. (Tr. 20, 52). Claimant has worked and volunteered as a paramedic for his local fire department. (Tr.

20). He also worked as a paramedic for Med Express prior to his employment with Employer. (Tr. 21).

Claimant was employed by Employer as a paramedic for approximately three months at the time of his injury. (Tr. 19, 21, 52). He was assigned to Employer's contract service department, which furnishes paramedics to offshore oil companies. He was a medic on a fixed platform and worked a 14 day on/off rotation. His job duties included filling out various paperwork regarding the offshore workers, conducting safety meetings and inventorying medical supplies. (Tr. 21-24). If a worker had to be transported to a land-based hospital, it was Claimant's responsibility to arrange the transportation; however, Claimant would remain on the platform after the worker was evacuated. (Tr. 23).

Claimant testified that while walking on the platform his foot became caught in the grating, when he turned causing his foot to twist. (Tr. 24). Claimant stated the contracted company, INSCO, would not allow him to leave the platform because they believed his ankle would get better. Claimant iced and elevated his foot at night and remained on the platform for four or five days until his rotation was over. (Tr. 25, 53). Claimant has not worked for Employer since returning from this rotation. (Tr. 53).

Claimant's ankle became swollen and discolored while he was still on the platform and he was unable to move his ankle. (Tr. 26). Upon ending his rotation, Claimant filled out an accident report with his Employer and then saw his family doctor, Dr. David Tate. Dr. Tate provided Claimant with medication and told him he could not work. (Tr. 26).

Claimant saw Dr. Tate approximately four times before Dr. Tate referred Claimant to Dr. Miller, an orthopedic surgeon, approximately a month after his injury. (Tr. 26-28). Dr. Tate told Claimant he believed his injury was worse than a sprained ankle.

He testified that Dr. Miller opined his ankle was frozen in place and suggested Claimant pursue physical therapy. (Tr. 28). Claimant stated that Carrier would approve physical therapy for one to two weeks and then discontinue it. He would have to re-start physical therapy, thus he was unable to receive physical therapy on a continued basis. He stated that due to Carrier's

refusal to approve his physical therapy, Dr. Miller referred him Dr. deAlvare. (Tr. 28-29). Claimant also visited Dr. Schutte once during this period. (Tr. 29).

Claimant was unsure, but believed Dr. Schutte was an orthopedic surgeon. (Tr. 29). He was also unsure whether his Employer or Louisiana Workers' Compensation Corporation (LWCC) referred him to Dr. Schutte. Dr. Schutte X-rayed Claimant's ankle; however, Claimant only visited Dr. Schutte once and never received the results from his X-ray. (Tr. 29-30).

Claimant visited Dr. deAlvare approximately five times. (Tr. 32). He testified that Dr. deAlvare wanted to perform an MRI and other tests which were not approved by Carrier. (Tr. 31). Dr. deAlvare also prescribed medication for Claimant, which upset his ulcers and had to be discontinued. Claimant was also having difficulty moving his leg and reported this to Dr. deAlvare and Dr. Miller. Claimant was informed that the difficulty with his leg was caused by his ankle injury. He stated that after a period of time the doctors realized that his leg was not working properly and began to look for a causation beyond his ankle injury. (Tr. 31).

Dr. deAlvare restricted Claimant to light duty work. (Tr. 31). However, Employer did not provide Claimant with light duty work and Claimant was informed by Lynn Guillory of Acadian Ambulance (Employer is a subsidiary of Acadian Ambulance) (Tr. 52), that until he was released totally he could not return to work. (Tr. 32). After Claimant's "hearing" (conference before the District Director), Dr. deAlvare was permitted to perform "some kind of scan instead of the MRI". (Tr. 32).

Claimant was referred to Dr. Warner, a psychologist, by Dr. deAlvare for a psychological evaluation. (Tr. 44). Dr. deAlvare and UMC believed Claimant's ankle was unable to heal due to his mental state regarding his ankle. Claimant stated that UMC was unable to provide him with pain management counseling and other tests and suggested Claimant's ankle pain may be psychological. (Tr. 45).

Claimant saw Dr. Warner once, when Dr. Warner gave Claimant the report from his psychological test. (Tr. 45). Dr. Warner suggested that Claimant seek medical treatment for his ankle and psychological treatment for his conversion disorder. Dr. Warner informed Claimant that with such treatment Claimant could return to full-time work within six months. (Tr. 45-46).

Claimant stated that Dr. deAlvare, his family doctors, and the doctors at UMC all opined that Claimant's ankle injury was impacted by another factor, yet could not determine from tests if Claimant suffered from a lower back injury or conversion disorder. They informed Claimant that if an injury "stayed this long that probably the problem they couldn't correct it because its been so long and it hasn't been taken care of." (Tr. 46-47). Claimant testified that in addition to his left ankle, he also had difficulty with his left leg. (Tr. 47). Claimant had difficulty picking up or kicking out his left leg, thus affecting his ability to maneuver steps, jump and use his leg for leverage. (Tr. 48). Claimant estimated that he had approximately fifty percent use of his entire left leg.

Claimant testified that doctors had examined his left leg and even opined that it had gotten smaller. (Tr. 48). He stated he has also walked with weights on his leg in an attempt to build his left leg back up and prevent muscle deterioration. (Tr. 48-49).

He stated that UMC and Dr. deAlvare wanted to run an MRI and other tests to determine if Claimant suffered from an injury besides his ankle, but the tests were never approved by Employer/Carrier. Claimant believed the doctors were concerned "about a disk" and "something in the back" and that this was the cause of the problems with his left leg. (Tr. 49-50).

Claimant was unsure but believed that Dr. deAlvare instructed him not to go back to work in May 1997. (Tr. 33). Claimant testified that Dr. deAlvare also informed him that his medical bills were not approved by Employer/Carrier and that until the bills were paid he would not see Claimant. Claimant did not know whether Dr. deAlvare's medical bills had been paid, however, Claimant has not received any bills from Dr. deAlvare. (Tr. 33).

He testified that he paid the pharmaceutical bills Employer/Carrier would not pay. (Tr. 34). Claimant also estimated that he has an outstanding prescription bill of \$85.00. (Tr. 34).

Claimant is able to walk "a pretty good distance" but has difficulty finding shoes loose enough for his left foot. (Tr. 40). He testified that he could not flex his left foot and cannot pick up his left leg when lying down. (Tr. 41). He is also unable to put strain on his left leg or use it for leverage

or pulling. (Tr. 42). However, Claimant has continued to walk without assistance, in order to maintain the use of his leg. He walks often but continues to have a burning sensation in his leg. Additionally, he is unable to lift heavy objects, such as lawn mowers, operate a standard shift, run or jump. (Tr. 41-42, 75).

Claimant is no longer taking prescription medication because he is no longer seeing a physician. (Tr. 43). Instead, Claimant takes Tylenol and other over-the-counter medications for pain.

From September 1998 until December 2000, Claimant conducted a job search. (Tr. 43). However, Claimant stated when employers learned he was involved in a workers' compensation case and was not totally released to work he was declined employment. Claimant testified he has stayed preoccupied and active with volunteer work at his church and other community organizations. (Tr. 44).

On December 4, 2000, Claimant began working maintenance for the Community Rehabilitation Hospital of Lafayette, where he is currently employed. (Tr. 34-35). Although, Claimant's job title is maintenance, he performs the hospital's CPR classes, fire training and paramedic training. Claimant testified that the hospital has accommodated his ankle injury by allowing him to do light duty work such as painting, fixing call bells, and deliveries. (Tr. 35-36). Claimant stated he ordinarily does not perform heavy work but once placed a desk on a dolly. Claimant works forty hours a week with a yearly income of \$25,000. (Tr. 36-37). He is also provided hospitalization as part of his employment benefits. (Tr. 37).

He testified he has had an employment contract with the State of Louisiana Department of Hospitals, Bureau of Emergency Medical Services (EMS), since 1989. (Tr. 37). Claimant provides quality assurance by filling out evaluations for paramedic skills classes. (Tr. 37-38). He may work from eight to ten hours a day and is paid a daily rate of \$150. However, this work is limited to three days a month. (Tr. 38, 55). Additionally, the classes are only offered ten months out of the year. (Tr. 40). Claimant may potentially earn \$450 a month. (Tr. 38). The maximum amount of days Claimant may work in a year is thirty, which Claimant stated is not guaranteed income because some classes may be canceled. (Tr. 40).

Claimant also worked for the EMS Bureau during September 1996, the month of his accident. Claimant stated he worked when he was able to walk on his ankle. (Tr. 38-39, 54). Claimant was provided a medical statement limiting him to light duty work, which allowed him to continue his contract. (Tr. 54-55). While Claimant continued his contract there were times when he was unable to work due to the pain from physical therapy. (Tr. 54). He performed his quality assurance contract while receiving workers' compensation and continued to perform his duties after his workers' compensation was discontinued in October 1998. (Tr. 40, 53). He testified he reported his earnings from 1996, 1997 and 1998 to Employer/Carrier. (Tr. 39).

Additionally, Claimant testified that in 1999, he worked part-time for Medic Systems, teaching classes for oil spill training. (Tr. 69-70). Claimant would teach four eight-hour classes every three months and earned \$100 to \$150 per day. Claimant taught approximately twelve classes. (Tr. (70-71)).

He has also remained involved with the fire department as a volunteer paramedic. (Tr. 62). Claimant stated he basically refills the department's medical oxygen tanks and only went on calls to help with injuries not related to fires. (Tr. 64).

Additionally, Claimant has continued to perform volunteer work and maintenance work without pay at his church. (Tr. 65). He estimated that he would go by the church once or twice a week for a couple of hours to check on the church's maintenance. (Tr. 66-67). Claimant would conduct electrical and plumbing repairs and other minor projects as they occurred. (Tr. 68). He would also oversee bigger projects, such as the replacement of the Church's siding. (Tr. 68). Additionally, Claimant stated he would periodically stop and visit with his priest. (Tr. 66).

Claimant and his brother have been business partners in Willis Small Engine Repair since 1981. (Tr. 55). Claimant owns the building and land where the business is located and the business profits were split 50/50 when the business was operating full-time. (Tr. 56). Claimant worked at this business full-time from 1981 until 1992, when he turned in his state license and began performing EMT work. (Tr. 56-57). He continued to perform repair work to make extra money on the side from 1992-1996, while his brother maintained the business part-time. (Tr. 57, 59-60). Claimant estimated that the business

last made a profit in 1996. (Tr. 59).

He stated that he had not worked at Willis Small Engine Repair since his accident, other than doing minor repairs and bringing personal equipment for his brother to help him with. (Tr. 59-61). Claimant testified that he was no longer capable of changing belts on lawnmowers because it required use of both legs. He estimated that after his accident he would stop by the shop two or three times a month. (Tr. 61)

Claimant testified that he does not believe he is totally disabled. (Tr. 76). He believes his problem is physical and not psychological but is willing to do whatever it take to return to his previous job as a paramedic. (Tr. 72). Claimant has never worn nor been recommended to wear an ankle brace, even though he walks with his left leg swinging out. Claimant's swinging of his left leg has led to hip pain. Claimant also stated that he is not as "sure footed" as he use to be and putting pressure on his left leg, such as walking or pulling, causes pain. (Tr. 73, 75). However, Claimant is still capable of climbing a ladder to change twelve foot high light bulbs at his church, although he states he only has to climb the first three rungs of the latter. (Tr. 73-74).

Mark Bellue

Mr. Bellue is a claims supervisor with Louisiana Workers' Compensation Corporation (LWCC). (Tr. 77). Prior to becoming a supervisor, he was a claims representative. Mr. Bellue has been Claimant's representative for the entire length of Claimant's claim. (Tr. 78).

Mr. Bellue testified that LWCC approved Claimant's physical therapy and never stopped the treatment after a week or two weeks. (Tr. 78). He was "pretty sure" that LWCC approved all the physical therapy and treatment requested by Claimant's doctors, specifically Drs. Tate and Miller. (Tr. 78, 79). Mr. Bellue stated that LWCC approved Claimant's EMG and nerve conduction study which resulted in a normal finding. (Tr. 78).

Mr. Bellue stated that Claimant was seeing Dr. Miller, the Claimant's choice of treating orthopedist, who recommended a second opinion because he could not find the cause of Claimant's pain and had run out of options. Thus, LWCC and Claimant agreed upon Dr. Schutte for a second opinion. (Tr. 79).

Mr. Bellue recalled that Dr. deAlvare had requested an MRI for Claimant. (Tr. 80). However, LWCC suggested sending Dr. deAlvare a CT scan performed on Claimant at University Medical Center. Dr. deAlvare reviewed the CT scan and determined it was normal and did not reiterate his request for an MRI.

Mr. Bellue testified that around May 1997 Claimant told him he had never had a back injury or problems with his back. (Tr. 80). Claimant initially told Mr. Bellue that he had to drag his left foot and therefore was unable to return to work. (Tr. 81).

Mr. Bellue stated that to his knowledge all of Dr. deAlvare's medical bills and Claimant's prescription bills have been paid. (Tr. 81). He did not recall LWCC denying any of Claimant's prescription bills nor did he recall Claimant or his representative at anytime requesting psychiatric treatment. (Tr. 82).

Mr. Bellue testified Claimant's benefits were discontinued on October 20, 1998, because there was no medical evidence of a disability and LWCC had evidence that Claimant was actually working at the time. (Tr. 82). Mr. Bellue stated LWCC had obtained a surveillance video that was inconsistent with Claimant's statement about dragging his foot. Additionally, Mr. Bellue stated he was not informed by Claimant that while he was receiving his temporary total disability benefits he was concurrently working for the "EMT Bureau". Nor was Mr. Bellue informed by Claimant that he was the maintenance man for his church at the same time he was receiving his temporary total disability benefits. (Tr. 82-83).

Mr. Bellue testified that he had received all of the reports from Dr. deAlvare and he had not recommended an MRI after reviewing the CT scan in 1999. (Tr. 83-84). He also stated Dr. Schutte did not place any restrictions on Claimant nor determine he had a disability or recommend any further treatment. (Tr. 85).

Jeff Shoemaker

Mr. Shoemaker is employed as a field investigator by the private investigative firm of Lyon's Research Group. (Tr. 86). He has worked as a field investigator since May 1996 and has possessed a state license since June 1996. As a field investigator, Mr. Shoemaker primarily performs surveillance in

addition to locating people and background checks. The majority of Mr. Shoemaker's surveillance is for workers' compensation liability. (Tr. 86).

Mr. Shoemaker testified that he was assigned to conduct surveillance of Claimant in April 1997. (Tr. 87). He performed surveillance of Claimant on April 2-4, 7-8 and 16-17, 1997. Mr. Shoemaker conducted remote video surveillance, which is remaining out of view of the subject's residence and then following his vehicle and videotaping the subject's activity. (Tr. 87-88, 98). Mr. Shoemaker would usually devote eight hours a day to Claimant's surveillance. (Tr. 98). He identified Claimant by the vehicle he was driving. (Tr. 88). He stated that if he lost Claimant while following him, he would spend approximately two hours trying to relocate Claimant and if he was unsuccessful he would end the day. (Tr. 98).

Mr. Shoemaker stated that he tries to videotape only the subject and his activities and relevant information to reference the location. (Tr. 89, 98). He stated that he turns the videotapes into his boss, who checks his report with the videotapes and then locks the tapes in a file cabinet. (Tr. 89-90). Mr. Shoemaker used a videotape with a date/time group and one three-hour tape which has not been altered in any way. (Tr. 99-100). He stated that he videotaped everything, whether it was worthy or not because he is neutral in this matter. (Tr. 100). He testified that he compiled his final reports from notes he took while conducting the surveillance, his memory and from the videotape. (Tr. 90-91).

Mr. Shoemaker testified that Claimant went to Willis Small Engine Repair shop six out of the seven days he performed surveillance. (Tr. 93-94). While at the repair shop, Claimant was observed working on equipment and also making a bank deposit at a bank in Kaplan, Louisiana. (Tr. 94-95). Mr. Shoemaker also stated that while performing the surveillance Claimant appeared to be walking in a normal manner and he did not see Claimant limping or dragging his left ankle or tripping. (Tr. 95). Claimant did not appear to have difficulty with his ankle when entering or exiting his vehicle.

Mr. Shoemaker additionally testified that he observed Claimant pushing a riding lawnmower on and off a trailer which did not appear to cause Claimant any difficulty with his left leg or ankle. (Tr. 96).

THE MEDICAL EVIDENCE

David Tate, M.D.

Claimant saw Dr. Tate in September 1996 at which time Dr. Tate ordered an X-ray of Claimant's left foot and ankle. The report issued by Dr. Maurice Bercier revealed that Claimant's soft tissue and bony structure were without abnormality and there was no radiopaque foreign body. Dr. Bercier's impression was a negative left foot and ankle. (CX-1, p. 7).

Rolland C. Miller, M.D.

Dr. Tate referred Claimant to Dr. Roland Miller. (CX-1, p. 12). Dr. Miller saw Claimant on November 1, 1996 for a follow up. Dr. Miller noted that Claimant had been put through extensive therapy and it had not made a "great deal of difference" for his left foot. Claimant reported continuing pain and stiffness in his left foot, inability to get his foot to neutral dorsiflexion and very poor inversion and eversion of the left foot. Claimant also continued to walk with a limp.

Dr. Miller found Claimant's case to be very unusual, opining that Claimant may simply have a joint that tends to be very stiff. (CX-1, p. 12). However, to make sure Claimant did not have nerve injury or any type of intra-articular damage preventing his ankle movement, Dr. Miller recommended a CAT scan of his left ankle and foot and an EMG/nerve conduction study of his left leg. If Claimant's test results were negative, Dr. Miller opined that routine intensive therapy would provide Claimant with a good result but it may take him longer than usual.

On November 4, 1996, Dr. Miller reviewed Claimant's CAT scan. (CX-1, p. 13). The test revealed a calcaneal spur with the rest of Claimant's tissue and bone being "unremarkable". Additionally, Claimant had no joint abnormalities.

On December 13, 1996, Dr. Miller opined that Claimant was walking much smoother, but still with a limp. (CX-1, p. 18). Claimant had gained motion of his left ankle in all parameters except that it was still stiff in eversion. Claimant had been bicycling and walking a mile or two a day on his own in addition to his therapy and exercises. Dr. Miller went over other exercises that could be done at home by Claimant to stretch the

ankle and for inversion/eversion type of motion. Dr. Miller opined that Claimant appeared to be improving and anticipated he would do well with his injury. Dr. Miller recommended that Claimant continue his present treatment and return in one month for re-evaluation.

James N. Domingue, M.D.

On November 15, 1996, Dr. Domingue conducted an EMG and stated his impression of Claimant's EMG and nerve conduction studies on his low back and left leg were normal without clear-cut electrophysiological evidence of radiculopathy or peripheral nerve entrapment. (CX-1, p. 14).

John P. Schutte, M.D.

Claimant saw Dr. Schutte for a second medical opinion on March 6, 1997, upon Dr. Miller's request to LWCC, due to his slow progress. (CX-1, pp. 2-6, 11; EX-1, pp. 1-2). He complained of pain in his left ankle and leg but denied having any knee or back pain. Claimant stated he injured his ankle while working offshore as a paramedic when his ankle was caught and twisted in a grating. Claimant reported feeling a tear and immediate pain in his ankle at the time of his accident.

Claimant complained of being unable to control his ankle which hurt in the bone. (CX-1, p. 2; EX-1, p. 1). He informed Dr. Schutte he was walking "quite well" until he suddenly lost function of his foot during therapy. Claimant could not move his toes up or down and reported having to drag his foot. He denied any numbness or tingling in his foot, although his foot swells.

On physical examination, although Claimant tended to drag his foot, he was able to dorsiflex his toes and plantar flex his foot during gait. He reported he did not have numbness in his foot. During the evaluation by Dr. Schutte, he was unable to move his foot up or down. (CX-1, p. 2; EX-1, p. 1).

Dr. Schutte opined that Claimant had complete lack of motor function in his calf musculature. When walking, however Claimant had active function. Claimant exhibited limited inversion and eversion of both of his "hind feet". He had dorsiflexion of ten degrees and plantar flexion of thirty-five degrees with little evidence of ankle swelling. Claimant did

not appear to have excessive pain with palpation around his ankle except when palpation occurs across his mid-foot laterally. (CX-1, p. 2; EX-1, p. 1)

Upon reviewing Claimant's x-rays, Dr. Schutte opined that the only bony abnormality was a calcaneonavicular coalition which appeared to be bony and fibrotic with mid-foot arthritis. This was also evident in his CT scan. (CX-1, p. 2; EX-1, p. 1).

Dr. Schutte opined it was probable Claimant sustained an ankle sprain which had probably healed. He also opined that Claimant's present symptoms revolved around a pre-existing mid-foot arthritis problem. Dr. Schutte determined that Claimant was having a conversion reaction based on completely normal EMGs and nerve conduction studies. Dr. Schutte observed Claimant extending and flexing his toes and his sensation was completely normal, yet upon examination his foot was "like a piece of wood" and he would not move his toes. Dr. Schutte believed there was a chance, although unusual with Claimant's normal neurologic studies, that he had some type of muscular dystrophy. (CX-1, p. 3; EX-1, p. 2). Dr. Schutte did not assign any restrictions on Claimant or recommend further treatment.

Leo A. deAlvare, M.D.

Dr. deAlvare saw Claimant on May 6, 1997 for an initial neurological visit upon a referral by Dr. Miller to evaluate his left ankle and his "inexplicable problem" with his leg. (CX-2, pp. 13-20, 35; EX-2, pp. 1-2). Claimant had been treated by other physicians, yet his foot had not only not improved but decreased to no active movement of the ankle. Claimant reported no tingling or numbness in his foot and no past medical history of back or neck problems. (CX-2, p. 13; EX-2, p. 1).

Dr. deAlvare determined from Claimant's neurological examination that he was in no apparent distress, was alert and fully oriented and unperturbed by his current medical situation. (CX-2, p. 13; EX-2, p. 1). Examination of Claimant's gait showed he had circumduction² of the left lower extremity and walked with his ankle in a frozen position. He tended to drag the lateral surface of his foot and held his hip externally rotated. (CX-2, pp. 13-14; EX-2, pp. 1-2). He also held some

² An active or passive circular movement of a limb.
Dorland's Illustrated Medical Dictionary 339 (27th Ed. 1988).

degree of flexion at his knee and tended to favor his left side. Dr. deAlvare did not test Claimant's toe or heel walking nor examine the cranial nerves and neck.

Claimant's deep tendon reflexes were symmetrical throughout and his plantar responses were down going. Additionally, he had two beats of clonus³ at both ankles. (CX-2, p. 14; EX-2, p. 2).

His motor exam revealed good motor power in his lower right extremity, but little power in the muscles in his lower left extremity. (CX-2, p. 14; EX-2, p. 2) However, he was able to use his left lower extremity to remove his right shoe. He was also able to get on and off the examination table without difficulty. Individual testing of his muscles showed profound weakness or at least lack of demonstrable strength.

His sensory exam was intact to temperature and vibration and he had a full range of ankle motion without pain. (CX-2, p. 14; EX-2, p. 2). Measurements of his thighs revealed that both thighs were 54 cm. However, measurement of his calves revealed that his right calf was 42 cm and his left calf was 41½ cm.

Dr. deAlvare opined that Claimant's problem did not fit any anatomical or organic syndrome and his physical exam did not correlate well with his dynamic exam. Dr. deAlvare also opined that Claimant's illness was non-organic, but to rule out an unusual lumbar lesion, he requested an MRI of Claimant's lumbar spine. (CX-2, p. 14; EX-2, p. 2).

Claimant returned to Dr. deAlvare's office on May 21, 1997. Carrier had refused Dr. deAlvare's request for an MRI. (CX-2, pp. 30, 35). He brought several pairs of shoes for Dr. deAlvare which showed no evidence of an abnormal gait or foot drop. Claimant's examination revealed tenderness along his ankle joint line, specifically anteriorly. He stated and his examination revealed that he could not straighten out his quadriceps muscles when he was sitting down and could not do a straight leg raise when lying down. Dr. deAlvare found this to be "very non-anatomical". Dr. deAlvare still believed an MRI of the lumbar spine was needed to rule out any lumbar pathology before concluding Claimant suffered from a non-structural illness. Dr. deAlvare hoped Claimant's tenderness along his joint-line was

³Clonus in the ankle is abnormal reflex movements induced by sudden dorsiflexion of the foot. Id. at 347.

related to pain in his ankle, thus preventing him from bending his ankle when walking and causing other abnormalities in his gait. (CX-2, p. 30). Dr. deAlvare prescribed non-steroidal and anti-inflammatory medication and again requested an MRI of Claimant's lumbar spine. Dr. deAlvare further noted Claimant's "return to work status" as sedentary work with maximum lifting of 10 pounds and limited standing or walking. (CX-2, p. 31).

Claimant returned to Dr. deAlvare on June 30, 1997, without an MRI of his lumbar spine. (CX-2, p. 29). He continued to have the same symptoms and his exam was essentially the same. He was unable to tolerate his prescribed medication because of his stomach ulcers. Dr. deAlvare believed they were at an impasse and needed an MRI. He was unsure he could do anything for Claimant during the interim period and suggested he return on an as needed basis. If an MRI was approved by Carrier, Dr. deAlvare stated he would be glad to discuss his care with him.

The record is devoid of any medical treatment record or reports during the period from June 30, 1997 until May 27, 1999.

On May 27, 1999, Claimant brought Dr. deAlvare a CT scan of his lumbar spine which did not show much in the way of difficulty except for a little spinal stenosis at L4-L5 and possibly some mild foraminal stenosis but Claimant had no radicular symptoms. Claimant again had what Dr. deAlvare referred to as a "very curious difficulty" moving his muscles in certain positions. He could not extend his leg when seated but could do so when supine. He had very little dorsiflexion of his foot and yet did not drag his foot when he walked. His thighs and calves were bilaterally equal when measured. Dr. deAlvare requested a bone scan to be certain there was not some type of arthropathy occurring that would explain Claimant's situation. (CX-2, pp. 26, 34; EX-2, p. 3). Dr. deAlvare also believed a second nerve conduction/EMG might be needed. Dr. deAlvare had no explanation other than the possibility of arthropathy to explain Claimant's condition and requested he return in two months. (CX-2, p. 26; EX-2, p. 3).

On June 1, 1999, a bone scan was conducted at St. Mary's Imaging Center in Lafayette, Louisiana. The scan revealed "slight uptake at the knee joint bilaterally and at the mid-tarsal region bilaterally most compatible with minimal degenerative change." There was no abnormal uptake of the spine. (CX-2, p. 33). On June 9, 1999, Dr. deAlvare released Claimant for light duty work. (CX-2, p. 27).

On August 2, 1999, Claimant returned to Dr. deAlvare. He was unable to straighten out his knee when in the seated position, but could place his left leg over his right in order to take off his sock. (CX-2, pp. 23, 25; EX-2, p. 4). Dr. deAlvare opined that Claimant was undergoing hysterical conversion and recommended he undergo a psychological evaluation.

Claimant returned to Dr. deAlvare on October 4, 1999 without having undergone a neuropsychic evaluation. (CX-2, pp. 21, 24). Dr. deAlvare believed there was nothing more he could do until Claimant underwent a neuropsychic evaluation and advised Claimant not to return until he had done so. He opined that it is "unknown" when Claimant would be able to return to work. (CX-2, p. 24).

Mark S. Warner, Ph.D.

Claimant underwent a psychological evaluation by Dr. Warner on April 28, 2000. (EX-3, Exhibit 3, pp. 1-4). He was referred to Dr. Warner by Dr. Glover to assist in differential diagnosis and treatment planning. (EX-3, Exhibit 3, p. 1). Dr. Warner was deposed by the parties on February 5, 2001. (EX-3). He is currently serving as an assistant professor of clinical psychology for LSU Medical Center in New Orleans, Louisiana, at its residency training site in Lafayette, Louisiana. (EX-3, p. 5).

Claimant reported he was utilizing UMC services because workers' compensation would not authorize further medical services and he wanted to know what was wrong with his ankle and what type of treatment could be performed. At the time of his evaluation, he was not engaging in exercises at home to increase the flexibility of his ankle and believed that worker's compensation owed him \$25,000 plus the differences in salary. He also stated he was hesitant to return to work until this issue was resolved. Additionally, he felt that applying for work was not beneficial because he was only capable of performing light duty work. (EX-3, Exhibit 3, p. 1).

Claimant denied personal or a family history of psychiatric or substance abuse problems. His medical history was significant for a work-related injury (strained back) twenty-four years ago, tonsil and appendix surgery and current high blood pressure. At the time of his evaluation, Claimant

complained of difficulty supporting himself with his left leg, inability to run and clumsiness with tripping and falling. He stated that he would like to find out why he has lost partial function of his left leg. Claimant reported that he was active with his local church and had a contract with the state to provide national tests for EMT certification. He was also very satisfied with his life as a whole. (EX-3, Exhibit 3, p. 2).

Testing revealed Claimant had a normal IQ, scoring 99, but his ability to process information was "noticeably deficient." (EX-3, p. 12). He had an ability to do "very well with things he's familiar with, [but] doesn't handle novel situations real well." His ability to do complex and novel problem solving was "really impaired." (EX-3, p. 13). Dr. Warner opined Claimant does not have a lot of resistance to new things and "experiences emotions and reaction to things in life such as emotions of anxiety, depression, fear, anger, he's not a person who really accepts those very well." (EX-3, p. 14). Claimant does not deal with the emotional or stressful aspects of injuries and the loss of income which led him to convert a "tremendous amount of emotional pressure into physical symptoms." (EX-3, p. 15). Dr. Warner further opined that Claimant's not working is significant because it increases his experience of pain. (EX-3, p. 16). Dr. Warner stated it would be better for Claimant to return to work than not returning. He opined that a conversion disorder is not an intentional malingering. (EX-3, p. 25). Claimant does not require medication or treatment for this psychological condition. The "best medication" is "getting the validity of returning to work." (EX-3, p. 27).

Claimant referred often to his priest, a clinical psychologist, to whom he had discussed his problems. Once a rapport was established Claimant was pleasant, friendly, polite and compliant. During the actual tasks evaluation his posture was erect with a slow gait apparently from the weakness in his left leg. His motor behavior was unremarkable with right hand dominance. He was persistent, diligent and put forth a good effort. Claimant appeared self confident and assured and had no observable reaction to failure of tasks. He exhibited consistent work behavior on problem-solving tasks and his response speed on tasks was within normal expectations. He also exhibited a flexible ability to shift tasks and change strategy as needed. Claimant's thought processes were logical and coherent with unremarkable thought content. (EX-3, Exhibit 3, p. 2).

Claimant exhibited average intelligence, his verbal and performance tests were within normal limits and he had a relative strength of non-verbal fluid reasoning. (EX-3, Exhibit 3, pp. 3, 4). He exhibited a low average processing speed which did not completely account for the conflicting severe deficits exhibited on his sensitive non-verbal, un-timed measure of problem solving and reasoning.

He openly responded to questions yet denied significant emotional problems and appeared to be overly self-critical. (EX-3, Exhibit 3, p. 3). Dr. Warner believed it was likely that Claimant had a strong need for attention, affection and sympathy and felt insecure when he did not receive it. Claimant attempted to keep a positive attitude, avoiding acknowledgment of life's difficulties. He also tended to blame others when he could not resolve problems and either avoided his anger or expressed it in a passive aggressive way. Dr. Warner opined that Claimant's personality was similar to individuals with unresolved issues of secondary gain and that his emotional responses were exacerbating his physical symptoms. (EX-3, Exhibit 3, pp. 3, 4). Claimant acknowledged that since the date of his injury he had become more depressed, discouraged and tired and that he had mild levels of anxiety with minimal depression. (EX-3, p. 3).

Dr. Warner diagnosed Claimant with conversion disorder on AXIS I, and dependent and narcissistic features on AXIS II. He also opined that Claimant's ongoing workers' compensation litigation was a psychosocial stressor. (EX-3, Exhibit 3, p. 3). Dr. Warner recommended Claimant engage in an exercise program or seek physical treatment and continue his counseling with his priest. (EX-3, Exhibit 3, p. 4).

THE SURVEILLANCE EVIDENCE

On April 2, 1997, video surveillance by Lyons Research Group showed Claimant walking out of a sporting goods store and McDonald's with no apparent limp or swinging of his left leg. (EX-4). He was also videoed at Willis Small Engine Repair walking with what appeared to be a normal gait. While pumping gas, Claimant placed his entire weight upon his left leg when he propped his right leg up on the gas pump platform. He was also seen walking with a normal gate to and from the gas pump to the store. Later, Claimant was videoed walking in and out of Anthony's with no visible limp or swinging of his left leg.

(EX-4).

Surveillance was continued on April 4, 1997 when Claimant was seen getting out of his car and walking with a normal gait in and out of Willis Small Engine Repair. (EX-4). He also placed his weight upon his left leg while bending to retrieve what appeared to be a bank bag out of a car. The same day Claimant was seen at Coast to Coast Hardware store carrying a box and getting into his car. During approximately a span of ten minutes at Willis Small Engine Repair, he was seen attempting to start one weed-eater and then propping his bent left leg up and balancing a second weed-eater upon his left thigh for approximately two minutes. Claimant was also viewed getting in and out of his car with no apparent problems. (EX-4).

On April 7, 1997, Claimant was again videoed at Willis Small Engine Repair getting out of his car and then leaving approximately two hours later. He returned to the shop approximately an hour later and walked into the shop with no visible limp. (EX-4).

The next day, April 8, 1997, Claimant was videoed arriving and leaving Willis Small Engine Repair several times and placing all his weight on his left foot when getting out of his car. He was also videoed while in the garage, but not engaged in any activity. (EX-4).

On April 17, 1997, Claimant was seen arriving at Willis Small Engine Repair and pushing a riding lawn mower down a trailer ramp that was attached to his van. He additionally pushed the lawn mower into the garage and after purchasing belts at Napa Auto Parts pushed the lawn mower up the trailer ramp, stretching and pushing with both his legs. (EX-4).⁴

⁴EX-5 is a summary of the video surveillance and investigation by Lyons Research Group, which comports with the above analysis of the video. The summary also refers to surveillance on April 16, 1997, when Claimant was observed leaving Dr. Roland Miller's office and entering Willis Small Engine Repair, which was not included in the video surveillance.

The Contentions of the Parties

Claimant contends that he cannot return to his former employment as a paramedic because he is unable to pass the physical fitness test, as a result of his work-related injury on September 21, 1996.

Claimant claims that he has not been released to return to his previous job as a paramedic but has been released for light duty work. He argues that he has not performed work for wages at Willis Small Engine Repair since his injury, but has volunteered at his church and performed other light duty work without pay. He claims that he is now employed as a maintenance man at a local hospital, which accommodates his special needs.

Additionally, Claimant disagrees with his portrayal in the surveillance video. He contends that he never denied that he could walk or stand. He also argues that the video does not show him working at Willis Small Engine Repair, nor has he worked there for profit since 1995.

Claimant would like to gain full use of his leg and achieve financial stability. He does not view himself as "disabled" or gravely impaired, although he has leg and back problems. Claimant argues that he is 1) entitled to medical treatment or workers' compensation for the difference in wages if he cannot return to his previous employment as a paramedic; 2) workers' compensation payments from the date of its termination to the date he began his current employment (October 20, 1998 to December 4, 2000, totaling \$40,187.40) and 3) mileage reimbursement for medical visits.

Employer/Carrier, on the other hand, argue that Claimant reached maximum medical improvement on March 6, 1997, when Dr. Schutte opined that his sprained ankle had healed and released him to return to work with no further restrictions or recommendations. Employer claims that Claimant has been working while receiving temporary total disability benefits and that his contentions and behavior are contradicted by the surveillance video. Thus, Employer argues that Claimant has no degree of disability and is not entitled to any type of weekly indemnity benefits. Employer contends that Claimant's only injury is a conversion disorder, for which Dr. Warner opined the "best medicine" was Claimant's return to work.

IV. DISCUSSION

It has been consistently held that the Act must be construed liberally in favor of the Claimant. Voris v. Eikel, 346 U.S. 328, 333 (1953); J. V. Vozzolo, Inc. v. Britton, 377 F. 2d 144 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof. Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251 (1994), aff'g. 990 F.2d 730 (3rd Cir. 1993).

In arriving at a decision in this matter, it is well-settled that the finder of fact is entitled to determine the credibility of witnesses, to weigh the evidence and draw his own inferences therefrom, and is not bound to accept the opinion or theory of any particular medical examiners. Avondale Shipyards, Inc. v. Kennel, 914 F.2d 88, 91 (5th Cir. 1988); Atlantic Marine, Inc. and Hartford Accident & Indemnity Co. v. Bruce, 661 F. 2d 898, 900 (5th Cir. 1981); Banks v. Chicago Grain Trimmers Association, Inc., 390 U.S. 459, 467, reh'g denied, 391 U.S. 929 (1968).

A. Nature and Extent of Disability

The parties stipulated that Claimant suffers from a compensable injury, however the burden of proving the nature and extent of his disability rests with the Claimant. Trask v. Lockheed Shipbuilding Construction Co., 17 BRBS 56, 59 (1980).

Disability is generally addressed in terms of its nature (permanent or temporary) and its extent (total or partial). The permanency of any disability is a medical rather than an economic concept. Disability is defined under the Act as an "incapacity to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Therefore, for Claimant to receive a disability award, an economic loss coupled with a physical and/or psychological impairment must be shown. Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 110 (1991). Thus, disability requires a causal connection between a worker's physical injury and his inability to obtain work. Under this standard, a claimant may be found to have either suffered no

loss, a total loss or a partial loss of wage earning capacity.

Permanent disability is a disability that has continued for a lengthy period of time and appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. Watson v. Gulf Stevedore Corp., 400 F.2d 649, pet. for reh'g denied sub nom. Young & Co. v. Shea, 404 F.2d 1059 (5th Cir. 1968)(per curiam), cert. denied, 394 U.S. 876 (1969); SGS Control Services v. Director, OWCP, 86 F.3d 438, 444 (5th Cir. 1996). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement. Trask, 17 BRBS at 60. Any disability suffered by Claimant before reaching maximum medical improvement is considered temporary in nature. Berkstresser v. Washington Metropolitan Area Transit Authority, 16 BRBS 231 (1984); SGS Control Services v. Director, OWCP, supra., at 443.

The question of extent of disability is an economic as well as a medical concept. Quick v. Martin, 397 F.2d 644 (D.C. Cir. 1968); Eastern S.S. Lines v. Monahan, 110 F.2d 840 (1st Cir. 1940); Rinaldi v. General Dynamics Corporation, 25 BRBS 128, 131 (1991).

To establish a prima facie case of total disability, the claimant must show that he is unable to return to his regular or usual employment due to his work-related injury. Elliott v. C & P Telephone Co., 16 BRBS 89 (1984); Harrison v. Todd Pacific Shipyards Corp., 21 BRBS 339 (1988); Louisiana Insurance Guaranty Association v. Abbott, 40 F.3d 122, 125 (5th Cir. 1994). Claimant's present medical restrictions must be compared with the specific requirements of his usual or former employment to determine whether the claim is for temporary total or permanent total disability. Curit v. Bath Iron Works Corp., 22 BRBS 100 (1988). Once Claimant is capable of performing his usual employment, he suffers no loss of wage earning capacity and is no longer disabled under the Act.

B. Maximum Medical Improvement (MMI)

The traditional method for determining whether an injury is permanent or temporary is the date of maximum medical improvement. See Turney v. Bethlehem Steel Corp., 17 BRBS 232, 235, n. 5. (1985); Trask v. Lockheed Shipbuilding Construction Co., supra; Stevens v. Lockheed Shipbuilding Company, 22 BRBS

155, 157 (1989). The date of maximum medical improvement is a question of fact based upon the medical evidence of record. Ballesteros v. Willamette Western Corp., 20 BRBS 184, 186 (1988); Williams v. General Dynamics Corp., 10 BRBS 915 (1979).

An employee reaches maximum medical improvement when his condition becomes stabilized. Cherry v. Newport News Shipbuilding & Dry Dock Co., 8 BRBS 857 (1978); Thompson v. Quinton Enterprises, Limited, 14 BRBS 395, 401 (1981).

In the present matter, nature and extent of disability and maximum medical improvement will be treated concurrently for purposes of explication.

Claimant contends he is unable to return to his former employment. However, the only record evidence of a description of Claimant's prior employment and its physical demands as a paramedic is Claimant's own testimony. An analysis of this issue must consider the basis for any medical opinions releasing or diagnosing Claimant. Specifically, whether the medical decisions were based solely on Claimant's subjective statements to his physicians. Furthermore, Claimant's credibility must be considered due to the discrepancies between his testimony at the hearing and to his physicians which are contradicted by the surveillance video.

Claimant testified that his previous employment as a paramedic required him to complete paperwork, conduct safety meetings, inventory medical supplies, and arrange for the transportation of injured workers to land based hospitals. Employer/Carrier failed to provide a job description of the paramedic position.

The Dictionary of Occupational Titles (DOT) (4th Ed., Rev. 1991) Occupational Group Arrangement, has also been considered to determine if Claimant can physically return to his former employment. The DOT describes the strength requirement for a paramedic as "very heavy work". Id. at 079.364-026. "[V]ery heavy work" consists of occasionally exerting in excess of 100 pounds of force and/or frequently exerting in excess of 50 pounds or more and/or constantly exerting 20 pounds of force to move objects. Id. at Appendix C, IV (c). The strength requirement for an Emergency Medical Technician is described as "medium work". Id. at 079.374-010. "[M]edium work" requires occasionally exerting 20-50 pounds of force and/or frequently

exerting 10-25 pounds of force and/or exerting greater than 10 pounds of force constantly to move objects. Id. at Appendix C, IV (c).

Upon examination by Dr. Miller in November 1996, two months after his job injury, Claimant reported continuing pain and stiffness and walked with a limp. Dr. Miller found Claimant's case to be very unusual and opined that Claimant may have a joint that tends to be very stiff. To be sure Claimant did not have nerve injury, Dr. Miller requested a CT scan. Upon reviewing the CT scan, Dr. Miller determined Claimant had "unremarkable" tissue and bone and no joint abnormalities. In November 1996, Claimant also underwent an EMG which Dr. Domingue found to be normal. In December 1996, Dr. Miller believed Claimant was improving due to his exercise routine and opined he would do well with his injury. Dr. Miller based his opinion on Claimant's complaints and CT scan.

During Claimant's examination by Dr. Schutte in March 1997, he complained of pain in his left ankle and leg and had to drag his foot when he walked. He was also unable to move his foot up or down. Upon reviewing Claimant's X-ray and CT scan, Dr. Schutte opined that Claimant had pre-existing mid-foot arthritis but that his ankle sprain had probably healed. Dr. Schutte opined that Claimant was having a conversion reaction due to his "completely normal" EMGs and nerve conduction studies. Dr. Schutte believed it was possible, although unusual that Claimant may have some type of muscular dystrophy. No restrictions or follow-up treatment was recommended. Dr. Schutte based his opinion upon Claimant's complaints, physical examination, X-ray and CT scan.

Claimant saw Dr. deAlvare in May 1997, for a neurological examination. During the examination, Claimant walked with his left ankle in a frozen position, tended to drag his foot and held his hip externally rotated. During his sensory exam, he had a full range of ankle motion without pain. Dr. deAlvare opined that Claimant's problem was non-anatomical and non-organic and his physical exam did not correlate with his dynamic exam. Dr. deAlvare requested an MRI to rule out any unusual lumbar lesions. On May 21, 1997, Dr. deAlvare released Claimant for sedentary work with maximum lifting of 10 pounds and limited standing or walking.

In May 1999, Dr. deAlvare reviewed Claimant's CT scan. Claimant had a "very curious difficulty" moving his leg when

seated yet could do so when supine. He noted Claimant had very little dorsiflexion of his left foot, but yet did not drag his foot when walking. Dr. deAlvare requested a bone scan to be sure there was no arthropathy that would explain Claimant's situation and a second EMG/nerve conduction. He had no explanation for Claimant's condition other than the possibility of arthropathy. In June 1999, Dr. deAlvare opined Claimant was undergoing hysterical conversion and recommended a psychological evaluation. He released Claimant to perform light duty work. Dr. deAlvare's opinion was based upon Claimant's statements, physical examination and CT scan. Dr. deAlvare further opined in October 1999 that until Claimant underwent a neuropsych evaluation he had nothing to offer him.

Claimant saw Dr. Warner in April 2000 for a psychological evaluation. During his evaluation, Claimant exhibited a strong need for attention, affection and sympathy and felt insecure without this attention according to Dr. Warner. Dr. Warner also opined that Claimant's personality exhibited characteristics of secondary gain and his emotional responses were exacerbating his physical symptoms.

Dr. Warner additionally opined that Claimant does not deal with emotional or stressful aspects of injuries and that his loss of income and workers' compensation litigation had led him to convert a "tremendous amount of emotional pressure into physical symptoms". Dr. Warner also opined that Claimant's not working was significant because it increased his experience of pain. Dr. Warner believed it was in Claimant's best interest to return to work. He diagnosed Claimant with conversion disorder which is not an intentional malingering and does not require medication or treatment. He recommended an exercise program or physical treatment and continued counseling with Claimant's priest.

Additionally, Claimant's credibility has been brought into issue by Employer/Carrier's surveillance video. The video was recorded during April 1997. Thus, it is essential to compare Claimant's representations to his doctors during April 1997, his testimony and my conclusions therefrom to aid in a determination of Claimant's credibility.

An administrative law judge has the discretion to determine the credibility of witnesses. Furthermore, an administrative law judge may accept a claimant's testimony as credible, despite inconsistencies, if the record provides substantial evidence of

the claimant's injury. Kubin v. Pro-Football, Inc., 29 BRBS 117, 120 (1995); see also Plaquemines Equipment & Machine Co., v. Neuman, 460 F.2d 1241, 1243 (5th Cir. 1972).

Claimant testified that he had difficulty picking up or kicking out his left leg, which affected his ability to maneuver steps, jump or use his leg for leverage. He also stated that he could not flex his foot or put strain or pressure on his left leg for leverage or pulling. Additionally, he testified that he walked often but had pain and a burning sensation in his leg and was unable to lift heavy objects, such as lawn mowers. Claimant did not wear an ankle brace even though he walked with his left leg swinging out which led to hip pain.

In March 1997, Claimant reported to Dr. Schutte that he had pain in his left ankle and leg, was unable to control his ankle and had to drag his left foot. During his examination, he was unable to move his toes up or down, leading Dr. Schutte to comment that his foot was "like a piece of wood", yet when walking he had active function.

In April 1997, Claimant was videoed walking with what appeared to be a normal gait and no apparent limp or swinging of his left leg. He was observed placing his entire weight on his left leg and propping his bent left leg up and balancing a weed-eater upon his left thigh. Additionally, Claimant was observed pushing a riding lawn mower down and then back up a trailer ramp, stretching and pushing with both of his legs.

Less than a month later, during Claimant's examination by Dr. deAlvare, his gait exhibited a circular movement of his lower left leg and he walked with his ankle in a frozen position. He also tended to drag his left foot and held his hip externally rotated. However, he had full range of ankle motion without pain. Two weeks later, during another evaluation by Dr. deAlvare, Claimant brought in his shoes which showed no evidence of an abnormal gait or foot drop. Yet, Claimant could not straighten out his quadricep muscles when sitting and could not perform straight leg raises lying down.

Claimant also informed Mark Bellue of LWCC in May 1997 that he had to drag his left foot and was therefore unable to return to work.

The testimony and opinions of Drs. Schutte and deAlvare and the testimony of Mr. Bellue contradict Claimant's testimony.

Additionally, the surveillance video clearly shows Claimant walking with a normal gait and no limp or dragging of his left foot. It is therefore reasonable to doubt the credibility of Claimant's testimony. While Claimant may have, at one time, cause to limp or drag his foot due to his injury, that appears to longer no be the case. Claimant's inconsistent statements prior to and after the video bring into doubt his complaints regarding his injury and its residuals. Thus, it is essential to determine whether any objective evidence of continuing injury or physical restriction exists in support of Claimant's complaints.

Dr. Miller in November 1996, believed Claimant was improving and would do well with his injury in view of negative results on an EMG and nerve conduction studies, an unremarkable CAT scan and no joint abnormalities. Dr. Schutte believed Claimant had a pre-existing mid-foot arthritis, but that his sprained ankle had probably already healed. Dr. Schutte opined that Claimant was having a conversion reaction. Dr. deAlvare believed Claimant's problem was non-anatomical and non-organic. He found Claimant's difficulty with his leg "very curious" and opined that Claimant was undergoing hysterical conversion and released Claimant for light duty work in June 1999. The CT scan and bone scan performed on Claimant were normal with respect to his condition. Dr. Warner, a psychologist, confirmed Drs. Schutte and deAlvare's conversion disorder diagnosis and recommended Claimant return to work.

Since Dr. deAlvare treated Claimant more frequently and more extensively than other consultative physicians of record, I find him to be Claimant's treating physician. He recommended an MRI to rule out lumbar pathology on May 21, 1997. Carrier never authorized the recommended MRI. Nevertheless, Claimant was then released to perform sedentary work with restrictions. Therefore, Claimant is entitled to temporary total disability benefits based on his average weekly wage of \$548.00 from the date of his injury, September 21, 1996 to May 21, 1997.

However, given the total lack of objective evidence supportive of Claimant's alleged continuing condition, I do not find his complaints of residuals from his injury to be persuasive after May 21, 1997, at which time I find he reached MMI.

From May 21, 1997 to May 27, 1999, the record is devoid of any medical treatment or diagnosis of Claimant's condition. A

CT scan performed in the interim at a charity hospital system was provided to Dr. deAlvare for review on May 27, 1999. After such review, Dr. deAlvare did not re-new his recommendation for an MRI, but recommended a bone scan to rule out "some type of arthropathy" given Claimant's continuing situation. The bone scan was conducted on June 1, 1999, revealing slight uptake in the knees and mid-tarsal regions bilaterally compatible with minimal degenerative change.

Dr. deAlvare continued to physically restrict Claimant to modified work, which was premised on a recommended neuropsychological evaluation, that was not conducted until April, 28, 2000. The evaluation confirmed that Claimant had a conversion disorder which did not require medication or treatment and his recovery/resolution from the disorder was his return to work. Accordingly, I further find that Claimant's conversion disorder did not prevent him from performing work after May 21, 1997. Moreover, all diagnostic testing conducted after May 21, 1997, failed to establish a basis for Claimant's continuing injury/condition.

Prior to Dr. deAlvare's treatment, Dr. Schutte evaluated Claimant's injury and found that his sprained ankle had probably already healed. Claimant's statements to Dr. Schutte contradicted Dr. Schutte's observations during Claimant's physical examination and the results of his X-ray and CT scan. Dr. Schutte did not recommend any restrictions or follow up treatment for Claimant. Dr. Schutte's observations, taken into consideration with Claimant's discredited complaints and contradictory surveillance video, buttress a conclusion that Claimant has no restrictions and should be able to return to his former employment as a paramedic effective May 21, 1997. I so find.

In sum, in view of the foregoing, and the record as a whole, I find and conclude that Claimant had no continuing disability after May 21, 1997. I do not accord probative value to Dr. deAlvare's opinion that Claimant could only perform sedentary work after May 21, 1997. His opinions are based on Claimant's subjective complaints which were shown to be inconsistent and non-existent in the surveillance video offered into evidence. I have discounted Claimant's testimony to the contrary in view of his activities portrayed in the video which further belie his complaints. Moreover, the record contains no objective evidence to support a finding or conclusion that Claimant suffered a continuing disability after May 21, 1997, when his condition can

be deemed stabilized in the absence of any ongoing medical regime.

C. Medical/Surgical Benefits

Pursuant to Section 7(a) of the Act, the employer is liable for all medical expenses which are the natural and unavoidable result of the work injury. In order for Employer to be liable for Claimant's medical expenses, the expenses must be reasonable and necessary. Parnell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). A claimant has established a prima facie case for compensable medical treatment where a qualified physician indicates treatment is necessary for a work-related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255 (1984). Section 7 does not require that an injury be economically disabling in order for Claimant to be entitled to medical benefits, but only that the injury be work-related and the medical treatment be appropriate for the injury.

An employer found liable for the payment of compensation is responsible for those medical expenses reasonably and necessarily incurred as a result of a work-related injury. Perez v. Sea-Land Services, Inc., 8 BRBS 130 (1978). Entitlement to medical benefits is never time-barred where a disability is related to a compensable injury. Weber v. Seattle Crescent Container Corp., 19 BRBS 146 (1986). If a work injury aggravates, exacerbates, accelerates, contributes to, or combines with a previous infirmity, disease or underlying condition, the entire resultant condition is compensable. See Strachan Shipping Co. v. Nash, 782 F.2d 513 (5th Cir. 1986).

In the present matter, Claimant testified that he paid pharmaceutical bills that Employer/Carrier would not pay and he has an outstanding prescription bill of \$85.00.

Upon reviewing the medical records, I find few occasions upon which Claimant was prescribed medication. On May 21, 1997, Dr. deAlvare prescribed Daypro and Cytotec to Claimant. Claimant has provided copies of receipts from Eckerd Drug Store for \$77.29 and \$80.19 for 1999. On June 9, 1999, Dr. deAlvare prescribed Celebrex for Claimant. (CX-2, p. 32). I find the medications prescribed by Dr. deAlvare, are appropriate for Claimant's injury. Claimant has provided no other proof of his unpaid prescription bills. I therefore conclude that Employer/Carrier are responsible for \$77.29 and \$80.19 or a

total of \$157.48, in outstanding pharmaceutical bills, which were reasonably and necessarily incurred as a result of Claimant's work-related injury.

Claimant has also established that he has received medical bills for office visits to Dr. deAlvare for a total of \$720.00. (CX-2, pp. 3, 6-10). To the extent Employer/Carrier have not paid such medical bills or reimbursed Claimant for payments made, they are responsible to do so.

Although Claimant has not produced any specific evidence of his mileage to and from doctor's offices, hospitals or other testing and treatment facilities, he is entitled to be reimbursed for reasonable and necessary mileage at the prevailing federal mileage rate applicable for the specific time period or date involved for which Employer/Carrier are responsible

D. Petition for Intervention for Attorney Fees

Attorney Landry, Claimant's attorney prior to the trial of this case, filed a petition for intervention for attorney fees in the event that Employer/Carrier was found liable to Claimant.

Section 28(a) of the LHWCA provides that a person who successfully prosecutes a claim for benefits shall be awarded a reasonable attorney's fee against the Employer/Carrier. 33 U.S.C. § 928(a). A requisite for obtaining attorney's fees is that the Claimant's attorney must engage in a "successful prosecution" of the claim. 33 U.S.C. § 928(a); 20 C.F.R. § 702.134(a); Petro-Weld, Inc. v. Luke, 619 F.2d 418 (5th Cir. 1980).

Courts have held "successful prosecution" to mean, among other things, establishing the Claimant's right to past, present, or future compensation and/or medical benefits. Ingalls, Shipbuilding v. Director, OWCP, 991 F.2d 163 (5th Cir. 1993); Fairley v. Ingalls Shipbuilding, 25 BRBS 61 (1991). A claim is not successfully prosecuted when the Claimant does not receive any additional benefits. Murphy v. Honeywell, Inc. 20 BRBS 68 (1986).

In the present matter, Claimant has not succeeded in a successful prosecution of his claim. While Claimant is entitled to reimbursement of past pharmaceutical bills and any future

medical benefits that are reasonable and necessary, there is no evidence in the record that Employer/Carrier has ever denied payment of any of Claimant's medical bills. Additionally, Employer/Carrier has paid substantial medical benefits in the amount of \$8,338.16 in the past. Therefore, Claimant was not successful in proving that he has been denied medical treatment or benefits by Employer/Carrier.

Moreover, Claimant has failed to prove he is entitled to additional compensation benefits. Employer/Carrier paid Claimant temporary total disability benefits from September 26, 1996 through October 20, 1998 at a weekly compensation rate of \$365.34. I have found that Claimant is entitled to temporary total disability benefits based on his average weekly wage of \$548.00 from September 21, 1996 to May 21, 1997, at which time I found he had no continuing disability. Employer/Carrier have voluntarily paid Claimant temporary total disability benefits well beyond the date which I found he was no longer disabled.

Claimant has neither successfully obtained additional compensation nor established that Employer/Carrier refused to pay his continuing medical benefits notwithstanding their responsibility to do so. Therefore, I find and conclude that Claimant has not successfully prosecuted his claim within the meaning of Section 28 of the Act. Based upon my finding of an unsuccessful prosecution of this claim, I further find that an intervention for attorney's fees is inappropriate and therefore, attorney Landry's petition is **DENIED**.

V. INTEREST

Although not specifically authorized in the Act, it has been an accepted practice that interest at the rate of six per cent per annum is assessed on all past due compensation payments. Avallone v. Todd Shipyards Corp., 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. Watkins v. Newport News Shipbuilding & Dry Dock Co., aff'd in pertinent part and rev'd on other grounds, sub nom. Newport News v. Director, OWCP, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that "...the fixed

per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This rate is periodically changed to reflect the yield on United States Treasury Bills..." Grant v. Portland Stevedoring Company, et al., 16 BRBS 267 (1984). This order incorporates by reference this statute and provides for its specific administrative application by the District Director. See Grant v. Portland Stevedoring Company, et al., 17 BRBS 20 (1985). The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and upon the entire record, I enter the following Order:

1. Employer/Carrier shall pay Claimant compensation for temporary total disability from September 21, 1996 to May 21, 1997, based on Claimant's average weekly wage of \$548.00, in accordance with the provisions of Section 8(b) of the Act. 33 U.S.C. § 908(b).

2. Employer/Carrier shall pay all reasonable, appropriate and necessary medical expenses arising from Claimant's September 21, 1996, work injury, pursuant to the provisions of Section 7 of the Act.

3. Employer shall receive credit for all compensation heretofore paid, as and when paid.

4. Employer shall pay interest on any sums determined to be due and owing at the rate provided by 28 U.S.C. § 1961 (1982); Grant v. Portland Stevedoring Co., et al., 16 BRBS 267 (1984).

ORDERED this 25TH day of October, 2001, at Metairie, Louisiana.

A
LEE J. ROMERO, JR.
Administrative Law Judge